

ATTORNEY GENERAL
GREGORY H. SMITH

THE STATE OF NEW HAMPSHIRE

Deb
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THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

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April 13, 1983

Mr. Michael Cornelius, Comptroller
Administration and Control
State House Annex
Concord, New Hampshire 03301

Dear Mr. Cornelius:

You have requested our opinion on the manner in which revenues should be distributed by the state treasurer in FY 1983. It is our opinion, as more fully explained below, that no distribution of sweepstakes revenue may be made by the treasurer to the local school districts until all administrative expenses of the Sweepstakes Commission have been paid and a total of \$3,000,000 in sweepstakes revenues has been deposited in the general fund.

As a general rule, unless otherwise provided by law, all moneys received by the state treasurer, are to be deposited in the general fund. See RSA 6:11; RSA 6:12. RSA 6:12,I(a), however, specifically provides that the treasurer shall credit "moneys received by the state sweepstakes commission...to the sweepstakes special fund." The usual distribution of moneys credited to the sweepstakes special fund is governed by RSA 284:21(j) (1981 Supp.), which directs the treasurer to pay the expenses of the Sweepstakes Commission incurred in the administration of RSA 284 and RSA 287, and then to distribute the balance of the funds, on or before September 15th of each year, "to the school districts of the state on a flat grant per resident pupil basis." Section 21(j) specifically requires such grants to be utilized for educational purposes by the school districts, and further prohibits diversion or transfer of such funds for any other purpose.



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During the 1982 Special Session, the legislature enacted House Bill 27, Laws 1982, Chapter 39, which became effective upon passage on May 22, 1982. See Laws 1982, Chapter 39:19,I. Section 9 of Chapter 39 provides as follows:

39:9 Sweepstakes Revenue Dedicated. For the purposes of RSA 186-C:19,II as amended by section 2 of this act, for the purpose of section 5 of this act and for the purpose of section 8 of this act, any revenue earned by the sweepstakes commission in fiscal year 1982 over \$3,000,000 and up to \$4,100,000 shall be deposited in the general fund. In fiscal year 1983 any revenue earned by the sweepstakes commission over \$3,000,000 and up to \$3,850,000 shall be deposited in the general fund. (Emphasis supplied.)

Thus, the intent and effect of Section 9 of Chapter 39 of the Laws of 1982 were to make \$850,000 available in general fund revenues, to be applied to certain special educational costs for handicapped children in FY 1983.

Section 9 of Chapter 39 thus partially amended RSA 6:12,I(a), and required the state treasurer to credit all moneys received by the Sweepstakes Commission in fiscal year 1983 to the sweepstakes special fund; to pay the administrative expenses of the Sweepstakes Commission; to distribute the balance of the funds to the school districts up to \$3,000,000, and then to deposit a maximum of \$850,000 from revenues earned in excess of \$3,000,000 to the general fund for the purposes specified in House Bill 27. If gross revenues earned by the Sweepstakes Commission exceeded \$3,850,000 in FY 1983, the balance would be distributed to the local school districts, in the same manner as the first three million dollars of revenue, in accordance with the provisions of RSA 284:21(j).

Subsequent to the enactment of House Bill 27, the legislature passed the supplemental budget act, Laws 1982, Chapter 42. Section 29 of Chapter 42, which became effective on July 1, 1982, see Laws 1982, C. 42:223, provided as follows:

42:29 Distribution of Sweepstakes Fund.

I. The state treasurer shall credit all moneys received from the sweepstakes

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commission, and interest received on such moneys, to a special fund from which he shall pay all expenses of the commission incident to the administration of RSA 284:21-a through 21-s and RSA 287 on a quarterly basis.

II. Notwithstanding any other provision of law, the state treasurer shall transfer, after the payment of administrative expenses on September 30, 1982; December 31, 1982; March 31, 1983; and June 30, 1983, moneys deposited into the sweepstakes fund not to exceed a total of \$3,000,000 in fiscal year 1983 into the state general fund for the quarter ending on the date of the transfer.

III. Any moneys remaining in the sweepstakes fund on June 30, 1983, from income to the sweepstakes fund in fiscal year 1983, after all distributions required under paragraph II of this section, shall be paid out by the state treasurer on or before September 15, 1983, to the school districts of the state on a flat grant per resident per pupil basis. Such grants shall be used for educational purposes, and no part of said grants made under paragraph III of this section shall be diverted by transfer or otherwise to any other purpose whatsoever.

IV. The provisions of this section shall expire on September 16, 1983.

Read alone, Section 29 directs the treasurer, in FY 1983 only, to credit "all moneys received" from the Sweepstakes Commission, together with the interest received on such moneys, to the sweepstakes fund from which the expenses of the Commission, incurred in its administration of RSA 284 and RSA 287, are to be paid on a quarterly basis. See Laws 1982 C. 42:29,I. After payment of such administrative expenses each quarter, the balance of the moneys received in that quarter are to be deposited by the treasurer to the general fund until a total of \$3,000,000 has been transferred. See Laws 1982, C. 42:29,II. On June 30, 1983, if there are "any moneys remaining

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in the sweepstakes fund...from income to the sweepstakes fund in fiscal year 1983," after payment of administrative expenses and transfers authorized to be made to the general fund, such moneys are to be paid by the treasurer, on or before September 15, 1983, to the school districts on a flat grant per resident pupil basis to be used for educational purposes only. See Laws 1982, C. 42:29, III. The clear intent of Section 29 is to make available to the general fund, in FY 1983 only, the first \$3,000,000 in sweepstakes revenues, prior to any distribution of the sweepstakes fund to the local school districts.

Chapter 39, Section 9 and Chapter 42, Section 29 of the Laws of 1982 provide for two different methods of distribution of the sweepstakes fund. Chapter 39 essentially directs the treasurer to pay up to \$3,000,000 (less administrative expenses) to the school districts, to then deposit a maximum of \$850,000 to the general fund, and to distribute any revenues received in excess of \$3,850,000 to the school districts. Chapter 42 directs the treasurer to transfer the first \$3,000,000 in sweepstakes revenues to the general fund, after payment of administrative expenses, and then to distribute the balance of the sweepstakes fund to the local school districts. Thus, the answer to your inquiry concerning the proper distribution of the sweepstakes revenues in FY 1983 depends upon whether the two statutes enacted by the legislature in the 1982 Special Session can be reconciled, or whether the subsequent statute, Laws 1982, C. 42:29, impliedly repealed Laws 1982, C. 39:9.

Under general principles of statutory construction, statutes which deal with the same subject matter should be construed so as not to conflict with each other. State v. Woodman, 114 N.H. 497 (1974). Moreover, the enactment of two statutes on the same subject in the same session of the legislature is strong evidence that they were intended to be read together. Public Service Company of New Hampshire v. Lovejoy Granite Company, 114 N.H. 630 (1974). While subsequent legislation on the same subject which clearly conflicts with an earlier enactment will be deemed to impliedly repeal the prior law, repeal by implication is not favored. Board of Selectmen of the Town of Merrimack v. Planning Board of the Town of Merrimack, 118 N.H. 150, 152-3 (1978). Thus, if any reasonable construction of the two statutes taken together can be found, repeal of the earlier enactment of the legislature will not be implied. Id. at 153. Where two apparently conflicting

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statutes may be capable of reconciliation, it is appropriate to examine legislative history to ascertain, if possible, whether the legislature, which enacted both statutes, intended both statutes to be read together. See 1A C. Sands Sutherland Statutory Construction, § 23.10 n. 4 (1983 Supp.). However, if the two statutes cannot be reasonably reconciled, a later specific pronouncement of the legislature will be deemed to have impliedly repealed the earlier statute. See 1 A C. Sands, Sutherland Statutory Construction, § 23.17 (4th Ed. 1972).

Despite legislative history evidencing an apparent legislative intent to make \$3,850,000 in sweepstakes revenue available for general fund use in FY 1983, these two statutes cannot be reconciled, and therefore, Laws 1982, C. 42:29 impliedly repealed Laws 1982, C. 39:9. This irreconcilable conflict is created by the express language of Section 42 which provides that "the state treasurer shall credit all moneys received from the sweepstakes commission" to the special sweepstakes fund established by RSA 284:21(j). The term "shall" was used here with its ordinary mandatory meaning. Town of Nottingham v. Harvey, 120 N.H. 889, 895 (1980). Accordingly, all funds received by the Sweepstakes Commission in FY 1983 must be deposited in the sweepstakes special fund. Chapter 42:29,II further provides that "notwithstanding any other provision of law, the state treasurer shall transfer...moneys deposited to the sweepstakes fund not to exceed a total of \$3,000,000 in fiscal year 1983 into the state general fund...." Finally C. 42:29,III provides that the treasurer "shall" distribute the balance of the moneys remaining in the sweepstakes fund on June 30, 1983 to the school districts "after all distributions required under paragraph II" have been made. Thus, C. 42:29 requires, by its express terms, that all funds received by the Sweepstakes Commission are to be deposited in the special fund; that no more than \$3,000,000 in such funds, after payment of administrative expenses, is to be transferred to the general fund; and that the balance of the moneys remaining in the general fund on June 30, 1983 is to be distributed to the school districts, after the \$3,000,000 transfer required by Paragraph II is made. Thus, although there is evidence that the legislature may have expected the two statutory provisions concerning distribution of sweepstakes funds in FY 1983 to stand together, the unambiguous language of Laws 1982, C. 42:29 precludes such a construction. See, e.g., Caswell v.

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BCI Geogenetics, Inc., 121 N.H. 1043, 1050 (1981) (legislative intent is not to be found in what the legislature might have said, but in meaning of what it did say in the language of the statute itself).

In summary, the legislature has plainly directed that no distribution of sweepstakes revenues may be made to the school districts in FY 1983, until the expenses of the Sweepstakes Commission have been paid and a total of \$3,000,000 in sweepstakes revenue has been deposited in the general fund. If, despite the unambiguous language of Laws 1982, C. 42:29, the legislature intended a total of \$3,850,000 to be transferred to the general fund in FY 1983, we are unaware of any reason why that intent could not be expressed in legislation enacted prior to June 30, 1983, the date by which the amount available for distribution to local school districts is determined.

I trust this is responsive to your inquiry. If you have any further questions, please do not hesitate to contact this office.

Very truly yours,

Martha V. Gordon

Martha V. Gordon
Assistant Attorney General
Division of Legal Counsel

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